

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ARVIE QUINN,

Defendant.

CASE NO. 04-CR-80857-03
HON. LAWRENCE P. ZATKOFF

OPINION AND ORDER

AT A SESSION of said Court, held in the
United States Courthouse, in the City of Port Huron,
State of Michigan, on September 2, 2005

PRESENT: THE HONORABLE LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

I. INTRODUCTION

This matter is before the Court on Robert R. Elsey's Motion to Substitute Counsel - Adjourn All Pretrial and/or Plea Cutoff Dates and to Receive Discovery and James A. Waske's Motion to Withdraw as Counsel. The facts and legal arguments are adequately set forth in the briefs submitted. Therefore, finding that the determination of the issues will not be aided by oral argument, and pursuant to E.D. Mich. Local R. 7.1(e), this Court ORDERS that the above motions be decided upon the briefs submitted, without this Court entertaining oral arguments. For the reasons that follow, Robert Elsey's Motion to Substitute Counsel is GRANTED, James A. Waske's Motion to Withdraw is GRANTED, and the Motion to Adjourn All Pretrial and/or Plea Cutoff Dates shall be considered at a future date.

II. BACKGROUND

On December 30, 2004, Defendant Arvie Quinn was indicted on five counts of a 60 count

indictment filed against him and 13 other persons. On January 25, 2005, Mr. Waske was appointed by the Federal Defender Office as a CJA Panel Appointment to represent Defendant. This Court held a status conference on February 24, 2005, at which counsel for most of the defendants and the Court established numerous critical dates for this case, including the following: a motion cut-off date of June 30, 2005, and a plea cut-off date of August 25, 2005. Mr. Waske attended that meeting and represents in his motion to withdraw that he subsequently secured and reviewed all discovery provided by the Government. Mr. Waske also maintains that he negotiated a Rule 11 Plea Agreement on behalf of Defendant and that he met with Defendant on August 23, 2005, to review said Plea Agreement. According to Mr. Waske, at the conclusion of that meeting, Defendant instructed Mr. Waske that he would accept the Plea Agreement and to schedule a plea date and time with this Court. The Court recognizes that Mr. Waske called the Court on August 23, 2005, to set up a plea time for August 25, 2005, and an unsigned version of the Rule 11 was forwarded to the Court on August 23, 2005.

On August 23, 2005, at about the same time that Mr. Waske called the Court to set up the plea time, the Court received a call from Mr. Elsey indicating that he was new counsel for Defendant. Mr. Elsey filed an Appearance of Counsel and his Motion to Substitute Counsel-Adjourn All Pretrial and/or Plea Cutoff Dates and to Receive Discovery the next day, August 24, 2005.

On August 25, 2005, as scheduled, the Court held a conference to discuss how the case would proceed for any defendants who did not plead guilty on that day. Neither Mr. Waske nor Mr. Elsey appeared at that conference. Shortly thereafter, Defendant had an opportunity to speak with Mr. Waske, and then Mr. Waske and Defendant spoke, on the record, before this Court. Mr. Waske informed the Court that Defendant no longer desired Mr. Waske's representation and wished to be represented by Mr. Elsey. Defendant confirmed that to be true after this Court asked him if that was his desire and after notification by the Court that August 25, 2005 (i.e., that day), was the final date for pleading guilty. Later that day, Mr. Elsey appeared before this Court to request adjournment of

the applicable dates in this case, including discovery and plea cut-off dates. Mr. Elsey indicated that he would file additional materials to supplement his Motion to Adjourn. To date, such materials have not been received by the Court.

III. OPINION

A. Motion to Withdraw and Motion to Substitute Counsel

The Court finds that Mr. Waske has set forth sufficient grounds for withdrawing as counsel and that such withdrawal will not prejudice Defendant. Defendant no longer desires Mr. Waske's services and has retained, or had retained for him, Mr. Elsey, who filed an appearance as counsel for Defendant. In addition, the Court finds that, for the reasons set forth above, namely that Defendant desires Mr. Elsey as his attorney in this matter, Mr. Elsey has set forth sufficient grounds to substitute as counsel for Defendant. Accordingly, the Court hereby GRANTS Mr. Waske's Motion to Withdraw as Counsel and GRANTS Mr. Elsey's Motion to Substitute Counsel.

B. Motion to Adjourn

As noted above, Mr. Elsey has moved the Court to adjourn the discovery, motion and plea cut-off dates and has indicated to the Court his desire to supplement this portion of his motion. In the interests of justice, the Court shall wait until it receives such supplemental materials from Mr. Elsey before addressing the motion to adjourn, however, the Court directs Mr. Elsey to supply such materials to the Court on or before September 9, 2005.

The Court's decision does not, of course, prevent Mr. Elsey from conducting a review of all outstanding discovery. To the contrary, the Court urges Mr. Waske and Mr. Elsey to work together to ensure that Mr. Elsey imminently has in his possession all discovery that has been provided by the Government.

IV. CONCLUSION

Accordingly, and for the reasons set forth above, Robert Elsey's Motion to Substitute Counsel is GRANTED, James A. Waske's Motion to Withdraw is GRANTED, and the Motion to Adjourn All Pretrial and/or Plea Cutoff Dates is held in abeyance until Mr. Elsey provides the Court with whatever supplemental materials he desires on or before September 9, 2005.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff

LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: September 2, 2005

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on September 2, 2005.

s/Marie E. Verlinde

Case Manager
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